

Other Comments:

I strongly urge the FCC to NOT mandate the use of the so-called "broadcast flag" in its upcoming rulemaking. Doing so would upset the balance of fair use struck between copyright holders and the public. It would also destroy the potential for innovation to aid both consumers AND producers of digital audiovisual media.

FAIR USE

Broadcast flags will only have the effect of preventing legitimate fair use. A device cannot tell between fair use and illegitimate uses because fair use depends on context which cannot be codified, much less computed.

Fair use must remain a flexible concept that must adapt with the changing technology landscape where copyright is applied. Mandating the broadcast flag prevents fair use from being applied in a case-by-case basis, and instead substitutes a industry interpretation of what fair use should be.

This is simply not the balance that section 107 of the Copyright Act strikes. In short, the broadcast flag ignores the principle that copyright is a contract between the public (as enforced by the government) and producers of content. This contract strikes a balance between the interests of each party. Content producers have a limited set of exclusive rights which are, in part, kept in check by fair use. Giving the copyright holders a technical protection measure like the broadcast flag rides roughshod on this balance and begins a slippery slope where digitalization portends the end of fair use.

INNOVATION HARMS

Furthermore, broadcast flags impose new costs on the implementation of reception equipment. Digital mediums of communication allow for much cheaper and wider use and development of technology by parties not usually considered in the development of "content use" technologies. For example, with the advent of digital television, it should be possible to write software to integrate television viewing with the desktop PC experience. Once the data is digital, and available to computers systems through various interface devices, software developers have the ability to devise new ways to view the content and integrate the television content with other data. New avenues for innovation and convergence are possible at very low cost -- but only if processing of the data carried through the medium is unfettered by arbitrary laws designed to codify the content holders interests.

The Internet was built on the innovation created in a regulation-free environment. It was able to grow so fast and effectively because its users could contribute back to the architecture without permission from the government or concerns that engineering efforts would land those contributors in legal trouble. The mandate of a broadcast protection flag would impose restriction on implementations of digital TV processing devices and software that will stifle the same sort of end user creativity and innovation which grew the Internet into what is today.

CONCLUSION

I urge the FCC to reject any rule mandating digital rights protection schemes in broadcast or other media transmission schemes.